`Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 351 of 2003 (M/S)

Union of India through the Officer-
In-Charge, Military Farm, Dehradun.
..... Petitioner

Versus

(1) Sri Toffic C/o BMS 32,
Chakrata Road, Dehradun,
District-Dehradun.
(2) Central Govt. Industrial Tribunal-
cum- labour Court, Lucknow.
(3) The Assistant Labour Commissioner
(Central) 59 C, Tyagi Road, Dehradun.
..... Respondents

Learned Assistant Solicitor General for Union of India-Petitioner.
Sri Gopal Narain, learned counsel for the respondent No.1.

Date: 27th July, 2005.

Hon'ble P.C.Verma, J.

This writ petition has been filed impugning the award dated 30.12.2002 made by the respondent No.2/Central Government Industrial Tribunal-cum-Labour Court, Lucknow in Industrial Dispute No. 139 of 2000, contained in Annexure No.1 to the writ petition, holding the termination of respondent No.1/workman illegal and unjustified and directed the reinstatement of workman with full back wages.

2. The Industrial Dispute decided by the impugned award was referred in the following terms:-

"Whether the action of the Management, Dairy Farm, Dehradun in terminating the services of Toffic Ex casual labour is legal and justified? If not, to what relief the workman is entitled?"

3. Brief facts giving rise to the present petition are that the workman, Banwari Lal Yadav was engaged by the petitioner as a casual labour with effect from 23.11.1988. He worked continuously since then upto 31.8.1998. In each year of his association as casual labour, he worked 240 days and more, thus, was in continuous service as defined under Sec. 25-B of the Industrial Disputes Act, 1947. The work on which the workman was engaged was of perennial nature. His services were illegally dispensed with by oral order w.e.f 1.9.1998, without any notice, notice pay and retrenchment compensation etc. as is obligatory under Sect. 25-F of the said Act. It was also alleged that junior workers were retained in preference to the workman and the policy of 'first come last go, was not followed. He was entitled to regularisation as per policy of the Government but the management terminated his services without observing prescribed procedures rendering termination order void-ab-initio. The workman claimed reinstatement with back wages.

4. The petition-management has not disputed engagement of the workman as casual labourer or his continuous working upto 31.8.1998 before the Tribunal. No specific denial has been made by the petitioner assailing claim of the workman that he serviced 240 days and more each years of his service. It was also contended that the workman was surplus and so was retrenched and his name is included in the list of workmen to be called for service in

future on availability of work. Admittedly, retrenchment notice was not given before disengaging the workman, instead, he was directed to collect his compensation on 22.9.1998 from the office. He preferred not to collect his cheque. Accordingly, the workman was terminated on 23.9.1998 treating substantial compliance of Sec. 25-F of Industrial Disputes Act, 1947.

5. The learned Tribunal upon hearing the parties counsel and after appreciating the evidence adduced by the parties rightly held that the workman was a casual labour and he fulfilled eligibility criteria of being regularised and further held that the action of the management can not be justified ion terminating the services of the workman, on plea of surplusage without following statutory procedures. The learned Tribunal further rightly held the termination of the workman void-ab-initio ad directed for his reinstatement with full back wages.

6. Learned Assistant Solicitor General for Union of India submitted that the award made by the learned Tribunal is not correct on merit. The only dispute is regarding the payment of back wages. The back wages, in my opinion, is grossly excessive. Therefore, in the special facts and circumstances of the case, I reduce the back wages to the tune of 50%.

7. Accordingly, the writ petition is partly allowed. The respondent No.1/wrokman shall be paid only 50% (fifty per cent) of back wages, if he comes to join the institution and serve the institution.

(P.C.Verma, J.)

27.07.2005

Rajeev